

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JUAN MANUEL JUAREZ,

Petitioner,

v.

SECOND LEVEL ADMINISTRATION,

Respondent.

No. 1:22-cv-01162-ADA-HBK (HC)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS, DISMISSING  
PETITION FOR WRIT OF HABEAS  
CORPUS, DIRECTING CLERK OF COURT  
TO CLOSE CASE, AND DECLINING TO  
ISSUE CERTIFICATE OF APPEALABILITY

(ECF Nos. 1, 4)

Petitioner Juan Manuel Juarez is a state prisoner proceeding pro se with an amended petition for writ of habeas corpus brought pursuant to 28 U.S.C. § 2254. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On December 7, 2022, the Magistrate Judge issued findings and recommendations recommending that the pending petition be dismissed because it fails to state a federal habeas claim. (ECF No. 5.) On December 22, 2022, Petitioner filed objections that argue (1) the Magistrate Judge violated his First Amendment rights by finding that he should have brought his claim as a civil rights action pursuant to 42 U.S.C. § 1983, and (2) he cannot afford to bring a civil rights action. (ECF No. 6.)

First, the Court agrees with the Magistrate Judge that it is not proper to construe Petitioner's habeas claim as a § 1983 action. Petitioner is correct that he named an individual responsible for committing the offensive acts in his petition, but he did not name that individual

1 or any other individual as a defendant in the action. (*See* ECF No. 1 at 1, 3.) Nor does he  
2 identify if the individual named in his petition is a government employee or an inmate at the  
3 facility in question. Second, Petitioner seems to be under the impression that, if the Court  
4 construes his habeas petition as a § 1983 claim, he will be liable for only the \$5.00 habeas filing  
5 fee rather than the \$350.00 civil case filing fee. (ECF No. 6 at 3.) This is not the case.  
6 Regardless of whether the Court construes the petition as a § 1983 claim or Petitioner files a new  
7 civil case, Petitioner will have to account for the \$350.00 filing fee. Nevertheless, if Petitioner  
8 wishes to file a new case, he may seek permission to do so without prepayment of the filing fee.  
9 *See* 28 U.S.C. § 1915(a)(1).

10 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the court has conducted a  
11 de novo review of the case. Having carefully reviewed the entire file, including Petitioner's  
12 objections, the Court holds the findings and recommendations to be supported by the record and  
13 proper analysis.

14 Having found that Petitioner is not entitled to habeas relief, the Court now turns to  
15 whether a certificate of appealability should issue. A petitioner seeking a writ of habeas corpus  
16 has no absolute entitlement to appeal a district court's denial of his petition, and an appeal is only  
17 allowed in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003); 28 U.S.C.  
18 § 2253. Where, as here, the court denies habeas relief on procedural grounds without reaching  
19 the underlying constitutional claims, the court should issue a certificate of appealability "if jurists  
20 of reason would find it debatable whether the petition states a valid claim of the denial of a  
21 constitutional right and that jurists of reason would find it debatable whether the district court was  
22 correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). In the present  
23 case, the Court finds that reasonable jurists would not find the Court's determination that the  
24 petition should be dismissed debatable or wrong, or that Petitioner should be allowed to proceed  
25 further. Therefore, the Court declines to issue a certificate of appealability.

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Accordingly,

1. The findings and recommendations issued on December 7, 2022, (ECF No. 5), are adopted in full;
2. The petition for writ of habeas corpus, (ECF No. 1), is dismissed;
3. The Court declines to issue a certificate of appealability; and
4. The Clerk of Court is directed to close the case.

IT IS SO ORDERED.

Dated: February 14, 2023

  
UNITED STATES DISTRICT JUDGE